

1 DAVID J. STEELE, CA Bar No. 209797
2 Email: david.steele@cph.com
3 CHRISTIE, PARKER & HALE, LLP
4 3501 Jamboree Road, Suite 6000-North Tower
5 Newport Beach, CA 92660
6 Telephone: (949) 476-0757
7 Facsimile: (949) 476-8640

5 HOWARD A. KROLL, CA Bar No. 100981
6 Email: howard.kroll@cph.com
7 CHRISTIE, PARKER & HALE, LLP
8 350 W. Colorado Boulevard, Suite 500
Pasadena, CA 91105
Telephone: (626) 795-9900
Facsimile: (626) 577-8800

9 SARAH B. DEUTSCH (Admitted *pro hac vice*)
10 Email: sarah.b.deutsch@verizon.com
11 VERIZON CORPORATE SERVICES CORP.
12 1515 North Court House Road, Suite 500
Arlington, VA 22201
Telephone: (703) 351-3044
Facsimile: (703) 351-3670

13 Attorneys for Plaintiffs
14 VERIZON CALIFORNIA INC.
VERIZON TRADEMARK SERVICES LLC
VERIZON LICENSING COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

18 VERIZON CALIFORNIA INC.; VERIZON
19 TRADEMARK SERVICES LLC; and
VERIZON LICENSING COMPANY.

20 Plaintiffs.

21

VS.

22 ONLINENIC INC.; and DOES 1-10,

23 Defendants.

Case No. CV-08-2832-JF

**NOTICE OF MOTION AND
MEMORANDUM IN SUPPORT OF
PLAINTIFFS' *EX PARTE*
APPLICATION FOR AN ORDER
AUTHORIZING SERVICE OF
DEFENDANT ONLINENIC INC. BY
DELIVERY OF THE SUMMONS AND
COMPLAINT TO THE CALIFORNIA
SECRETARY OF STATE**

Hon. Jeremy Fogel

Pltfs' Ex Parte App. for Order Auth. Service on Def. by Delivery to Calif. Sec. of State Case No. CV-08-2832-JF

1 TABLE OF CONTENTS
2

	Page(s)
I. NOTICE OF MOTION	1
II. STATEMENT OF COURT RELIEF/ACTION	1
III. INTRODUCTION	1
IV. BACKGROUND OF FACTS	2
V. ARGUMENT	4
a. Defendant Could Not Be Served At Its Listed Principal Place Of Business Nor At Its Listed Executive Office Because Defendant Does Not Conduct Business At Either Location It Listed With The Secretary Of State.	4
b. Defendant's Agent Could Not Be Served At The Location It Listed With The Secretary Of State.	5
c. Service on Corporations by Delivery of the Summons and Complaint to the California Secretary of State is Proper Under The Federal Rules of Civil Procedure and California State Law Where The Corporation's Designated Agent Cannot With Reasonable Diligence Be Found At The Address Designated For Service.	6
i. Defendant's Agent Designated Cannot with Reasonable Diligence Be Found At The Address Designated For Personally Delivering The Process.....	7
ii. Despite Plaintiffs' Reasonable Diligence, Service of Process On Defendant's Designated Agent Could Not Be Effectuated By Hand.	7
iii. Because Plaintiffs Have Exercised Reasonable Diligence Service By Delivery To The Secretary Of State Should Be Ordered.	10
VI. CONCLUSION	10

1 TABLE OF AUTHORITIES
23 Page(s)4 **STATUTES**
5

6 Cal. Code of Civ. Pro. §415.20(a)	8
7 Cal. Code of Civ. Pro. §415.30(a)	8
8 Cal. Code of Civ. Pro. §416.10	8
9 Cal. Code of Civ. Pro. §416.10(b)	4
10 Cal. Code of Civ. Pro. §416.10(b)	6
11 Cal. Corp. Code §1502(b)	7
12 Cal. Corp. Code §1702	6, 10
13 Cal. Corp. Code §1702(a)	1, 2, 6, 9, 10
14 Cal. Corp. Code §1702(d)	6, 10
15 Federal Rules of Civil Procedure Rule 4(d)(1)(A)(ii)	8
16 Federal Rules of Civil Procedure Rule 4(e)(1)	1, 2, 4, 6
17 Federal Rules of Civil Procedure Rule 4(h)(1)(A)	4, 6

18 **MISCELLANEOUS**
19

20 Local Rule 7-10	2
--------------------------	---

1 I. NOTICE OF MOTION**2 TO THE COURT, TO ALL PARTIES AND THEIR ATTORNEYS OF
3 RECORD:**

4 **PLEASE TAKE NOTICE** that Plaintiffs, VERIZON CALIFORNIA INC., VERIZON
 5 TRADEMARK SERVICES LLC, and VERIZON LICENSING COMPANY (collectively
 6 “Plaintiffs”), by and through their attorneys, Christie, Parker & Hale, LLP, move this Court for
 7 an order authorizing service of OnlineNIC Inc. (“Defendant”) by hand delivery of the summons
 8 and complaint to the California Secretary of State. Plaintiffs believe this motion is suitable for
 9 a ruling on the papers submitted to the Court, however, Plaintiffs will attend any hearing
 10 requested by the Court and present oral argument at that time.

11 II. STATEMENT OF COURT RELIEF/ACTION

12 Plaintiffs request that the Court issue an order authorizing service of Defendant by hand
 13 delivery of the summons and complaint to the California Secretary of State under the Federal
 14 Rules of Civil Procedure Rule 4(e)(1) and the California Corporations Code §1702(a).

15 III. INTRODUCTION

16 Plaintiffs have exercised reasonable diligence in attempting to serve Defendant,
 17 employing a professional process server who attempted service on Defendant and its designated
 18 agent several times at several addresses, including those listed with the California Secretary of
 19 State, to no avail. Accordingly, an order authorizing hand delivery of the summons and
 20 complaint to the California Secretary of State is appropriate under the Federal Rules of Civil
 21 Procedure Rule 4(e)(1) and the California Corporations Code §1702(a).

22 Plaintiffs file this Application *ex parte* because they have been unable to serve
 23 Defendant. Neither Defendant nor counsel for Defendant has contacted Plaintiff’s counsel
 24 regarding this suit despite that Defendant’s designated agent and Chief Financial Officer
 25 received a copy of the complaint, summons, and related court documents. Plaintiff will attempt
 26 to deliver a copy of this Application to Defendant using first class mail to an address listed by
 27 Defendant for receiving mail, to facsimile using a facsimile number listed by Defendant on
 28 ///

Pltfs’ Ex Parte App. for Order Auth. Service
 on Def. by Delivery to Calif. Sec. of State - 1 -
 Case No. CV-08-2832-JF

1 their website for receiving facsimile messages, and via electronic mail using an electronic mail
 2 address listed by Defendant on their website for receiving electronic mail.

3 Plaintiffs have complied with Local Rule 7-10 regarding this Application as Federal
 4 Rules of Civil Procedure Rule 4(e)(1) permits service as authorized under California state law;
 5 California Corporations Code §1702(a) permits the application to the Court for an order that
 6 service be made upon the Secretary of State where the plaintiff cannot with reasonable
 7 diligence locate the Defendant's designated agent.

8 **IV. STATEMENT OF RELEVANT FACTS**

9 Defendant OnlineNIC Inc. is an active California corporation. (Declaration of Joshua T.
 10 Chu In Support Of Plaintiffs' *Ex Parte* Application For An Order Authorizing Service Of
 11 Defendant OnlineNIC Inc. By Delivery Of Summons And Complaint To California Secretary
 12 Of State ("Chu Decl."), ¶¶ 2-5, Ex. A, filed concurrently herewith.) Defendant's principal
 13 business office, according to California Secretary of State records, is 2315 26th Avenue, San
 14 Francisco, California, 94116 ("2315 26th Avenue"). (Chu Decl., ¶¶ 2-3, Ex. A.) Defendant also
 15 lists the 2315 26th Avenue address with the California Secretary of State for its designated
 16 agent, Mr. Rex Liu ("Liu"), and for all of its corporate officers. *Id.* In addition, Liu is listed as
 17 Defendant's Chief Financial Officer and Secretary. (Chu Decl., ¶ 5, Ex. B.)

18 On June 24, 2008 a professional process server, Jason Smith ("Smith") attempted to
 19 serve Defendant or its designated agent Liu, at the 2315 26th Avenue address. (Declaration Of
 20 Jason Smith In Support Of Plaintiffs' *Ex Parte* Application For An Order Authorizing Service
 21 Of Defendant OnlineNIC Inc. By Delivery Of Summons And Complaint To California
 22 Secretary Of State ("Smith Decl.") ¶¶ 2, 4) filed concurrently herewith.) Smith found that the
 23 2315 26th Avenue address was a residence owned by Liu, but that Liu did not reside at the
 24 property. (Smith Decl., ¶5.) Smith also found that neither Defendant nor Liu conducted
 25 business at the 2315 26th Avenue. (Smith Decl., ¶5.)

26 Plaintiffs conducted further investigations and found that Liu appears to currently
 27 conducts business at 351 Embarcadero E., Oakland, California ("351 Embarcadero").
 28 Defendant also lists this address on its website as its mailing address. (Chu Decl. ¶ 8, Ex. C.)

1 On June 27, 2008 Smith attempted to serve personally serve Liu at 351 Embarcadero.
 2 (Smith Decl., ¶¶ 6-7). Upon arriving at 351 Embarcadero, Smith was told by an employee of
 3 the business operating at that address that Liu was not present, but suggested that Liu was his
 4 superior. (Smith Decl., ¶ 7.) Smith was also told that Defendant did not conduct business at 351
 5 Embarcadero. (Smith Decl., ¶ 7.) Smith left a copy the Complaint, Summons and related court
 6 documents for Liu. (Smith Decl. ¶ 7.)

7 Plaintiffs also investigated and found a third address for Defendant. Defendant lists
 8 3435 Wilshire Boulevard, Los Angeles, California, 90010, as the location of its principal
 9 executive office with the California Secretary of State (“3435 Wilshire Boulevard”). (Chu
 10 Decl., ¶ 5, Ex. B.) Plaintiffs investigated this address and, notwithstanding Defendant’s listing
 11 of this address, the operator of the commercial building at 3435 Wilshire Boulevard has no
 12 record of Defendant on file and there is no indication that Defendant has an office at the
 13 address. (Chu Decl., ¶¶ 5-6.)

14 On July 16, 2008 Plaintiffs’ counsel sent a Waiver of Service of Summons along with
 15 the Summons, Complaint, related court documents, and postage pre-paid return envelopes
 16 (addressed to Plaintiffs’ counsel) to Liu and Defendant at both the 2315 26th Avenue and the
 17 351 Embarcadero addresses. (Chu Decl., ¶¶ 10, Exs. E-F.) Both packages were sent by United
 18 States Express Mail and required a signature by the recipient. *Id.* The package sent to 351
 19 Embarcadero address was accepted and signed for on July 17, 2008 by “R Liu.” (Chu Decl., 11,
 20 Exs. F, H.) However, the Waiver of Service of Summons has not been returned to Plaintiffs.¹

21 ///

22 ///

23 ///

24 ///

25 ///

26 ¹ The Waiver was sent on July 16, 2008 and requested Defendant return the acknowledgement
 27 form before September 14, 2008.

1 **V. ARGUMENT**

2 **a. Defendant Could Not Be Served At Its Listed Principal Place Of Business**
 3 **Nor At Its Listed Executive Office Because Defendant Does Not Conduct**
 4 **Business At Either Location It Listed With The Secretary Of State.**

5 Federal Rules of Civil Procedure Rule (“FRCP”) 4(h)(1)(A) provides that “a
 6 corporation may be served in a judicial district of the United States in the manner prescribed by
 7 Rule 4(e)(1) for serving an individual.” FRCP 4(e)(1) states that an individual, and thus the
 8 defendant corporation, “may be served in a judicial district of the United States by: (1)
 9 following state law for serving a summons in an action brought in courts of general jurisdiction
 10 in the state where the district court is located or where service is made.”

11 California Civil Procedure Code §416.10(b) provides that a summons may be served on
 12 a corporation by delivering a copy of the summons and the complaint:

13 [t]o the president, chief executive officer, or other head of the corporation, a vice
 14 president, a secretary or assistant secretary, a treasurer or assistant treasurer, a
 15 controller or chief financial officer, a general manager, or a person authorized by
 16 the corporation to receive service of process.

17 (A copy of Cal. Civ. Pro. §416.10(b) is attached as Exhibit I to the Chu Decl.)

18 On June 24, 2008, Smith attempted to serve Defendant or its designated agent, Liu at
 19 the 2315 26th Avenue address. (Smith, ¶ 4.) In addition to being Defendant’s designated agent,
 20 Liu is also Defendant’s Chief Financial Officer and Secretary, therefore Liu could have
 21 accepted service on behalf of Defendant. (Chu Decl., ¶¶ 3, 5 and Exs. A, B.) Upon arrival,
 22 Smith found that the 2315 26th Avenue address was a residence owned by Liu, but that Liu did
 23 not reside at the property. (Smith Decl., ¶5.) Smith also found that neither Defendant nor Liu
 24 conducted business at the 2315 26th Avenue. (Smith Decl., ¶5.)

25 In a further attempt to locate Defendant, Plaintiffs researched Liu and Defendant, and
 26 found that Liu appears to currently conduct business at the 351 Embarcadero address, and that
 27 Defendant also lists this address on its website (available at <http://www.onlinenic.com/support>)
 28 as its mailing address. (Chu Decl. ¶ 8, Ex. C.)

Pltfs’ Ex Parte App. for Order Auth. Service
 on Def. by Delivery to Calif. Sec. of State - 4 -
 Case No. CV-08-2832-JF

1 On June 27, 2008 Smith attempted to serve personally serve Liu at the 351
 2 Embarcadero address. (Smith Decl., ¶ 6.) Upon arriving at 351 Embarcadero, Smith was told
 3 Liu was not present, but the employee Smith spoke with did suggest that Liu was his superior.
 4 (Smith Decl., ¶ 7.) Smith was also told that Defendant did not conduct business at 351
 5 Embarcadero. (Smith Decl., ¶ 7.) Smith left a copy the Complaint, Summons and related court
 6 documents for Liu. (Smith Decl. ¶ 7, Ex. 1.)

7 Plaintiffs investigated an additional address in listed with the Secretary of State for
 8 Defendant as its principal executive office: the 3435 Wilshire Boulevard address. (Chu Decl.,
 9 ¶¶ 5, 6, Ex. B.) However, notwithstanding Defendant's listing of this address with the Secretary
 10 of State, the operator of the commercial building at 3435 Wilshire Boulevard has no record of
 11 Defendant on file and there is no indication that Defendant conducts business at the address.
 12 (Chu Decl., ¶¶ 5, 6.) Consequently, despite its numerous attempts, Plaintiffs have been unable to
 13 serve Defendant or any of its officers.

14 b. **Defendant's Agent Could Not Be Served At The Location It Listed**
 15 **With The Secretary Of State.**

16 Defendant has designated Liu in its filings with the Secretary of State as its designated
 17 agent. Defendant, lists 2315 26th Avenue address with the California Secretary of State for its
 18 designated agent Liu, as well as all of its corporate officers. (Chu Decl., ¶¶ 2-5 and Exs. A, B.)
 19 In addition to being Defendant's designated agent, Liu is also listed as the Chief Financial
 20 Officer and Secretary of Defendant. (Chu Decl., ¶ 5, Ex. B.)

21 As discussed above, on June 24, 2008 Plaintiffs sent Smith to serve Defendant and its
 22 designated agent, Liu, at the 2315 26th Avenue address. (Smith Decl. ¶ 4.) Smith found that the
 23 2315 26th Avenue address was a residence owned by Liu, but that Liu did not reside at the
 24 property. (Smith Decl., ¶ 5.) Smith also found that neither Defendant nor Liu conducted
 25 business at the 2315 26th Avenue. (Smith Decl., ¶ 5.)

26 Consequently, Plaintiffs were unable to serve Defendant or its designated agent at the
 27 address Defendant listed with the Secretary of State for its designated agent (2315 26th Avenue
 28 address).

c. Service on Corporations by Delivery of the Summons and Complaint to the California Secretary of State is Proper Under The Federal Rules of Civil Procedure and California State Law Where The Corporation's Designated Agent Cannot With Reasonable Diligence Be Found At The Address Designated For Service.

6 Federal Rules of Civil Procedure Rule (“FRCP”) 4(h)(1)(A) provides that “a
7 corporation may be served in a judicial district of the United States in the manner prescribed by
8 Rule 4(e)(1) for serving an individual.” FRCP 4(e)(1) states that an individual, and thus the
9 defendant corporation, “may be served in a judicial district of the United States by: (1)
10 following state law for serving a summons in an action brought in courts of general jurisdiction
11 in the state where the district court is located or where service is made.”

12 The controlling state law for serving a summons on Corporations, California Civil
13 Procedure Code §416.10(d) provides that service upon a California corporation may be
14 satisfied by delivering a copy of the summons and complaint as provided by Section 1702 of
15 the California Corporations Code. (A copy of Cal. Civ. Pro. §416.10(d) is attached as Exhibit I
16 to the Chu Decl.) California Corporations Code §1702(a), in turn, states:

17 [I]f the agent designated cannot with reasonable diligence be found at the
18 address designated for personally delivering the process, . . . and it is shown by
19 affidavit to the satisfaction of the court that process against a domestic
20 corporation cannot be served with reasonable diligence upon the designated
21 agent by hand . . . the court may make an order that the service be made upon
22 the corporation by delivering by hand to the Secretary of State, one copy of the
23 process for each defendant to be served, together with a copy of the order
24 authorizing such service.

25 (A copy of Cal. Corp. Code §1702 is attached as Exhibit J to the Chu Decl.)

26 California Corporations Code §1702(d) also provides that the “court order” pursuant to
27 §1702(a) “may be a court order of a court of another state, **or of any federal court** if the suit,
28 action, or proceeding has been filed in that court.” Cal. Corp. Code §1702(d) (emphasis added).

i. **Defendant's Agent Designated Cannot with Reasonable Diligence Be Found At The Address Designated For Personally Delivering The Process.**

4 California Corporations Code §1502(b) requires California corporations “designate, as
5 the agent of the corporation for the purpose of service of process, a natural person residing in
6 this state. ... If a natural person is designated, the statement shall set forth that person’s
7 complete business or residence street address.” Furthermore, the corporation has a duty to file
8 with the Secretary of State an annual information statement, including information of the agent
9 designated for the purpose of service of process and his address.” Cal. Corp. §1502(b) (a copy
10 is attached as Exhibit K to the Chu Decl.)

11 In its corporate filings with the California Secretary of State, Defendant lists the 2315
12 26th Avenue address as the address for its designated agent, Liu, for the purpose of service of
13 process on Defendant. (Chu Decl., ¶¶ 2-3, Ex. A.) A professional process server attempted to
14 serve the designated agent personally at the 2315 26th Avenue address on June 24, 2008.
15 (Smith Decl. ¶ 2, 4.) However, the process server found that the 2315 26th Avenue address was
16 a residential address and that the designated agent did not reside at, nor conduct business at, the
17 address Defendant listed with the California Secretary of State. (Smith Decl., ¶ 5.)

18 Pursuant to Cal. Corp. §1502(b), Defendant is required to designate an agent for the
19 purpose of service of process, and provide an address at which to locate the designated agent. It
20 is unclear whether Defendant provided an inaccurate address or whether Defendant has since
21 moved the location of its designated agent without properly updating the address with the
22 California Secretary of State as is required by statute. However, Plaintiffs exercised reasonable
23 diligence, in attempting service of Defendant's designated agent at the address Defendant
24 provided to the Secretary of State.

ii. **Despite Plaintiffs' Reasonable Diligence, Service of Process On Defendant's Designated Agent Could Not Be Effectuated By Hand.**

27 When Plaintiffs were unable to serve Defendant's designated agent at the address
28 Defendant provided to the Secretary of State, Plaintiffs took further steps to serve Defendant.

1 Plaintiffs found that Defendant appears to currently conduct business at the 351
 2 Embarcadero address. (Chu Decl. ¶ 8, Ex. C.) Defendant lists the 351 Embarcadero address on
 3 its website (available at www.onlinenic.com/support) as its mailing address. *Id.* On June 27,
 4 2008 Plaintiffs had Smith attempt to serve Defendant via Liu at the 351 Embarcadero address.
 5 (Smith Decl., ¶ 6.) Upon arriving at 351 Embarcadero, Smith was told Liu was not present, but
 6 the employee Smith spoke with suggested that Liu was his superior. (Smith Decl., ¶ 7.) Smith
 7 was then told that Defendant did not conduct business at 351 Embarcadero. *Id.* Smith left a
 8 copy the Complaint, Summons and related court documents for Liu. *Id.*

9 After attempting to serve Defendant at the 351 Embarcadero address, Plaintiffs further
 10 investigated and found that Defendant listed the 3435 Wilshire Boulevard address with the
 11 Secretary of State as its principal executive office. (Chu Decl., ¶¶ 5, 6, Ex. B.) However, when
 12 Plaintiffs investigated this address they found that that, despite Defendant's listing of this
 13 address, the operator of the commercial building at 3435 Wilshire Boulevard has no record of
 14 Defendant, and there is no indication that Defendant has, or had, an office at that address. (Chu
 15 Decl., ¶ 6.)

16 Plaintiffs also attempted to effect service of Defendant by leaving a copy of the
 17 summons and complaint during usual business hours at Defendant's office. Under the
 18 California Code of Civil Procedure “[i]n lieu of personal delivery of a copy of the summons
 19 and complaint to the person to be served as specified in Section 416.10, ... a summons may be
 20 served by leaving a copy of the summons and complaint during usual office hours in his or her
 21 office.” Cal. Code of Civ. Pro. § 415.20(a) (a copy is attached to the Chu Decl. as Exhibit L.)
 22 However, Plaintiffs were unable to have the summons and complaint left at either of the official
 23 addresses listed with the California Secretary of State, the 2315 26th Avenue or the 3435
 24 Wilshire Boulevard address, since Defendant did not have an office at either location. Thus,
 25 Plaintiffs could not effectuate proper service under CCP § 415.20(a).

26 Plaintiffs then attempted service by mailing, pursuant to Federal Rules of Civil
 27 Procedure Rule 4(d)(1)(A)(ii) and Section 415.30(a) of the California Code of Civil Procedure
 28 which states that “[a] copy of the summons and of the complaint shall be mailed . . . to the
 Pltfs' Ex Parte App. for Order Auth. Service
 on Def. by Delivery to Calif. Sec. of State - 8 -
 Case No. CV-08-2832-JF

1 person to be served, together with two copies of the notice and acknowledgement provided for
 2 in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.” Cal. Code
 3 of Civ. Pro. § 415.30 (a copy is attached to the Chu Decl as Exhibit M). However, “[s]ervice of
 4 a summons pursuant to this section is deemed complete on the date a written acknowledgement
 5 of receipt of summons is executed, if such acknowledgement thereafter is returned to the
 6 sender.” Cal. Code of Civ. Pro. § 415.30(c) (a copy is attached to the Chu Decl as Exhibit M).

7 A service waiver request was mailed to the address Defendant listed with the California
 8 Secretary of State, 2315 26th Avenue address, as well as the additional address Plaintiffs
 9 located for Defendant, 351 Embarcadero, both via United States Postal Service Express Mail.
 10 (Chu Dec., ¶ 10, Ex. F.) The mailing to Defendant’s listed address, 2315 26th Avenue address,
 11 was accepted and signed for by a Carrie Thorsd, an individual not identified in any of
 12 Defendant’s corporate documents. (Chu Dec., ¶ 11, Ex. G.)

13 The mailing to the additional address Plaintiffs located for Defendant, 351
 14 Embarcadero, was accepted and signed for by “Rex Liu.” (Chu Dec., ¶ 11, Ex. H.) However,
 15 that the address was not a designated address under California Corporations Code §1702(a),
 16 and the professional process server did not find any indication that Defendant’s corporation or
 17 business was located at this address. Consequently, Plaintiffs are unsure as to the validity of
 18 this service as well.²

19 Despite that its Chief Financial Officer and Secretary appears to have received the
 20 service waiver request Plaintiffs sent, Defendant has not executed and returned the written
 21 acknowledgement of receipt of the summons. (Chu Dec., ¶ 11, Ex. G.)

22 ² Plaintiffs cannot be certain that personal service on Liu, as the Chief Financial Officer of
 23 Defendant, was successful because they have been unable to confirm whether Liu maintains an
 24 office at the 351 Embarcadero address. Therefore, in an abundance of caution, and to leave no
 25 doubt that service of Defendant is proper, Plaintiffs request service be authorized on the
 26 California Secretary of State.

Plaintiffs have used more than reasonable diligence to locate and serve Defendant, Defendant's designated agent, Liu, and its corporate officers but have been unable to do so.

iii. **Because Plaintiffs Have Exercised Reasonable Diligence Service By Delivery To The Secretary Of State Should Be Ordered.**

Where a corporation cannot be served with reasonable diligence “the court may make an order that the service be made upon the corporation by delivering by hand to the Secretary of State...” Cal. Corp. Code §1702(a). Further, the Code specifically provides that the order “may be a court order of a court of another state, **or of any federal court** if the suit, action, or proceeding has been filed in that court.” Cal. Corp. Code §1702(d) (emphasis added).

10 Plaintiffs have diligently tried to locate and serve Defendant with the summons and
11 complaint in this case. Plaintiffs attempted to locate Defendant and its designated agent at two
12 addresses listed with the Secretary of State as well as a third address that appears to be where
13 Defendant is currently conducting business. In light of Plaintiffs' attempts to effect service on
14 Defendant, Plaintiffs believe their diligence has been more than reasonable. Plaintiffs request
15 this Court order that service be made upon the defendant corporation by hand delivery of the
16 process to the California Secretary of State pursuant to Cal. Corp. Code §1702.

VI. CONCLUSION

For the reasons set forth herein, since Plaintiffs have exercised more than reasonable diligence in attempting to locate and serve Defendant and Defendant's designated agent, Plaintiffs respectfully request that the Court order hand delivery of the summons and complaint to the California Secretary of State to satisfy service upon Defendant.

CHRISTIE, PARKER & HALE, LLP

DATED: September 3, 2008

By /s/ David J. Steele

David J. Steele
Howard A. Kroll

Attorneys for Plaintiffs
VERIZON CALIFORNIA INC.
VERIZON TRADEMARK SERVICES LLC
VERIZON LICENSING COMPANY

LLB IRV1115078.5-* 09/3/08 1:02 PM

Pltf's Ex Parte App. for Order Auth. Service
on Def. by Delivery to Calif. Sec. of State - 10 -
Case No. CV-08-2832-JF

CERTIFICATE OF SERVICE

I certify that on September 3, 2008, pursuant to Federal Rules of Civil Procedure, a true and correct copy of the foregoing document described as

NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' *EX PARTE* APPLICATION FOR AN ORDER AUTHORIZING SERVICE OF DEFENDANT ONLINENIC INC. BY DELIVERY OF THE SUMMONS AND COMPLAINT TO THE CALIFORNIA SECRETARY OF STATE was served on the party(ies) in this action via facsimile, electronic mail, and first-class mail, postage prepaid, certified, return receipt, addressed as follows:

Rex W. Liu
ONLINENIC INC.
2315 26th Avenue
San Francisco, CA 94116

Rex W. Liu
ONLINENIC INC.
351 Embarcadero E.
Oakland, CA 94606
Fax: 1-510-769-8487
Email: cs-us@OnlineNIC.com

I declare that I am employed by a member of the bar of this Court, at whose direction this service was made.

Executed on September 3, 2008 at Newport Beach, California.

/s/ Linda L. Bolter

1 DAVID J. STEELE, CA Bar No. 209797
2 Email: david.steele@cph.com
3 CHRISTIE, PARKER & HALE, LLP
4 3501 Jamboree Road, Suite 6000-North Tower
5 Newport Beach, CA 92660
6 Telephone: (949) 476-0757
7 Facsimile: (949) 476-8640

8 HOWARD A. KROLL, CA Bar No. 100981
9 Email: howard.kroll@cph.com
10 CHRISTIE, PARKER & HALE, LLP
11 350 W. Colorado Boulevard, Suite 500
12 Pasadena, CA 91105
13 Telephone: (626) 795-9900
14 Facsimile: (626) 577-8800

15 SARAH B. DEUTSCH (Admitted *pro hac vice*)
16 Email: sarah.b.deutsch@verizon.com
17 VERIZON CORPORATE SERVICES CORP.
18 1515 North Court House Road, Suite 500
19 Arlington, VA 22201
20 Telephone: (703) 351-3044
21 Facsimile: (703) 351-3670

22 Attorneys for Plaintiffs
23 VERIZON CALIFORNIA INC.
24 VERIZON TRADEMARK SERVICES LLC
25 VERIZON LICENSING COMPANY

26 UNITED STATES DISTRICT COURT
27 NORTHERN DISTRICT OF CALIFORNIA
28 SAN JOSE DIVISION

29 VERIZON CALIFORNIA INC.; VERIZON
30 TRADEMARK SERVICES LLC; and
31 VERIZON LICENSING COMPANY,

32 Plaintiffs,

33 vs.

34 ONLINENIC INC.; and DOES 1-10,

35 Defendants.

36 Case No. CV-08-2832-JF

37 **[PROPOSED] ORDER GRANTING
38 PLAINTIFFS' EX PARTE
39 APPLICATION FOR SATISFYING
40 SERVICE OF SUMMONS AND
41 COMPLAINT ON DEFENDANT
42 ONLINENIC INC. BY DELIVERY TO
43 THE CALIFORNIA SECRETARY OF
44 STATE**

45 Hon. Jeremy Fogel

1 WHEREAS Plaintiffs VERIZON CALIFORNIA INC., VERIZON TRADEMARK
2 SERVICES LLC, AND VERIZON LICENSING COMPANY (collectively “Plaintiffs”), have
3 attempted to effectuate service of process on ONLINENIC INC. (“Defendant”) and its
4 designated agent on multiple occasions and at multiple addresses;

5 WHEREAS the California Corporations Code §1702(a) allows, by court order, service
6 be made upon a corporation by delivering the process by hand to the Secretary of State if the
7 designated agent cannot with reasonable diligence be found at the address designated for
8 personally delivering the process;

9 WHEREAS California Corporations Code §1702(d) expressly provides that the court
10 order pursuant to §1702(a) may be made by a federal court if the suit, action, or proceeding has
11 been filed in that court;

12 WHEREAS this Court finds Plaintiffs have been reasonably diligent in their attempts to
13 serve Defendant;

14 | **IT IS HEREBY ORDERED THAT**

15 Plaintiffs' *Ex Parte* Application for Satisfying Service of Summons and Complaint on
16 Defendant OnlineNIC Inc. by delivery to the California Secretary of State is GRANTED; and

17 Plaintiffs' may serve the process on Defendant OnlineNIC Inc. by delivering by hand to
18 the Secretary of State one copy of the process, together with a copy of this Order authorizing
19 such service.

20

21 IT IS SO ORDERED.

21

DATED:

—

Jeremy Fogel
United States District Judge

25

26

27

[Proposed] Order for Pltfs' Ex Parte App. to Satisfy Serv. by Del to Calif. Sec. of State -2- C. N. CV 08-2832 JE

CERTIFICATE OF SERVICE

I certify that on September 3, 2008, pursuant to Federal Rules of Civil Procedure, a true and correct copy of the foregoing document described as
[PROPOSED] ORDER GRANTING PLAINTIFFS' EX PARTE APPLICATION FOR SATISFYING SERVICE OF SUMMONS AND COMPLAINT ON DEFENDANT ONLINENIC INC. BY DELIVERY TO THE CALIFORNIA SECRETARY OF STATE was served on the party(ies) in this action via facsimile, electronic mail, and first-class mail, postage prepaid, certified, return receipt, addressed as follows:

Rex W. Liu
ONLINENIC INC.
2315 26th Avenue
San Francisco, CA 94116

Rex W. Liu
ONLINENIC INC.
351 Embarcadero E.
Oakland, CA 94606
Fax: 1-510-769-8487
Email: cs-us@OnlineNIC.com

I declare that I am employed by a member of the bar of this Court, at whose direction this service was made.

Executed on September 3, 2008 at Newport Beach, California.

/s/ Linda L. Bolter